

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRY BROOKS,

Petitioner,

Case Number: 10-CV-10113

v.

HON. JOHN CORBETT O'MEARA

NICK LUDWICK,

Respondent.

**ORDER GRANTING PETITIONER'S MOTION FOR ENLARGEMENT
OF TIME TO FILE MOTION FOR RECONSIDERATION
AND DENYING MOTION FOR RECONSIDERATION**

Petitioner Terry Brooks filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his convictions for conspiracy to commit armed robbery, two counts of armed robbery, and assault with intent to rob while armed. Respondent filed a Motion to Dismiss on the ground that the petition raised unexhausted claims. On August 1, 2011, the Court issued an "Opinion and Order Granting Respondent's Motion to Dismiss and Denying Certificate of Appealability." Now before the Court are Petitioner's Motion for Enlargement of Time to File Motion for Reconsideration and Petitioner's Motion for Reconsideration.

The Court grants Petitioner's Motion for Enlargement of Time and accepts the Motion for Reconsideration as timely filed. To prevail on a motion for reconsideration, the movant must demonstrate a palpable error by which the court and the parties have

been mislead, and that correction of the error will result in a different disposition of the case. *See* E.D. Mich. LR 7.1(h)(3). Petitioner argues that reconsideration should be granted because portions of the Rule 5 records were not filed by Respondent and those records, filed as an attachment to the motion, show that all of the claims raised in the petition were exhausted in state court. Petitioner is correct that the additional state court pleadings show that he exhausted certain of the claims – those number I-VII in his habeas petition – previously found to be unexhausted. However, the additional pleadings do not show proper exhaustion of claims XIII, XIV, XVIII, and XIX. Therefore, the petition remains a mixed one and was properly dismissed without prejudice on that basis.

Accordingly, **IT IS ORDERED** that Petitioner's Motion for Enlargement of Time to File Motion for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner's Motion for Reconsideration is **DENIED**.

s/John Corbett O'Meara
United States District Judge

Date: February 14, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, February 14, 2012, using the ECF system and upon Petitioner at Newberry Correctional Facility, 3001 Newberry Avenue, Newberry, Michigan 49868 by first-class U.S. mail.

s/William Barkholz
Case Manager